

**MINUTES**

**MONTANA SENATE  
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON ENERGY AND TELECOMMUNICATIONS**

**Call to Order:** By **CHAIRMAN ROYAL JOHNSON**, on March 20, 2003 at 5:30 P.M., in Room 317-A Capitol.

**ROLL CALL**

**Members Present:**

Sen. Royal Johnson, Chairman (R)  
Sen. Corey Stapleton, Vice Chairman (R)  
Sen. Bea McCarthy (D)  
Sen. Walter McNutt (R)  
Sen. Gary L. Perry (R)  
Sen. Don Ryan (D)  
Sen. Emily Stonington (D)  
Sen. Bob Story Jr. (R)  
Sen. Ken Toole (D)

**Members Excused:** Sen. Mike Taylor (R)

**Members Absent:** None.

**Staff Present:** Todd Everts, Legislative Services Division  
Marion Mood, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 641, 3/10/2003;  
HB 710, 3/10/2003;  
HB 637, 3/10/2003

Executive Action: None

**HEARING ON HB 641**

**Sponsor:** REP. DICK HAINES, HD 63, MISSOULA

**Proponents:** Geoff Feiss, MT Telecommunications Assn.  
Rick Hays, Qwest  
Bill Squires, Blackfoot Telephone Cooperative  
Phil Maxwell, 3 Rivers Communications

**Mike Strand, MT Independent Telecommunications  
Systems**

**Tom Schneider, PSC**

**Opponents:**      **Ron Williams, Western Wireless**  
                     **Amy Grmoljez, Verizon Wireless**  
                     **Chuck Evilsizer, Ronan Telephone Co., Hot Springs**  
                                 **Telephone Company**  
                     **Margaret Morgan, Western Wireless**

**Opening Statement by Sponsor:**

**REP. DICK HAINES, HD 63, MISSOULA**, presented HB 641 and explained when a phone call is made, the caller utilizes the services of the originating carrier; when the call is answered, the terminating carrier is utilized. The cost of the call goes to the terminating carrier who then bills the originating carrier for cost of the call; most calls, or traffic, is routed through a transit carrier who gets its due from the originating carrier, and who tells the terminating carrier who the originating carrier is so the former can bill the latter. He went on to say in most cases, the originating carrier goes through a large transit carrier such as Qwest and the information needed by the terminating carrier gets lost in the shuffle. Independent telephone companies had worked diligently on getting this situation remedied; in fact, negotiations were still taking place, as evidenced by Amendment HB064101.ate which was the result of the good-faith negotiations and recommendations from wireless and wire line telecommunications providers. He went on to say HB 641 was designed to solve the above mentioned problem in three ways: it required all originating traffic to transmit information necessary to enable the source of the call; it required transit carriers to take the originating call from one network and transfer it to a terminating network to include all identifying information along with the calls they transit; and it required the transit carrier to provide billing records about originating calls. This provides a "back-up" method for the terminating carrier to identify the originating carrier. Lastly, it required originating and terminating carriers to enter into agreements which would establish the terms and conditions by which traffic is exchanged and paid for among networks. This negotiation process mirrors federal statute and ensures carriers are properly compensated for the services they provide. He stated the more involved he got in this process, the more complicated it became but wanted to go on record that good-faith negotiations had taken place involving representatives from large and small companies; without their effort, this bill would not have come about, to the detriment of Montana's consumers.

**Proponents' Testimony:**

**Geoff Feiss, MT Telecommunications Assn. (MTA)**, submitted **EXHIBIT (ens59a01)**, Amendment HB064101.ate, **EXHIBIT (ens59a02)**, written testimony, and **EXHIBIT (ens59a03)**, the "grey bill". He added the PSC had called prior to the hearing, requesting a couple of minor changes in Section 2, (5) which MTA had agreed with, namely to delete "competitive" on the first line, and change language to "the commission shall order compensation to the terminating carriers as allowed by the law"; he promised to have them ready before Executive Action. He stressed negotiations were still ongoing with Qwest and other parties and had resulted in language somewhat different from that which was passed by the House; he hastened to add content had not been altered. He felt these amendments substantially improved the technical aspects without changing the bill's intent, namely to ensure all telecommunications carriers are appropriately compensated for the services they provide.

**Rick Hays, Qwest**, deferred to previous testimony in the interest of time but wanted to add his company's perspective of what this legislation would do. The issue at hand had been a huge challenge to the industry for a number of years, had been before the PSC, Federal District Court, the 9th District Circuit Court of Appeals, and in the 2001 Legislature. He felt the parties involved had made good progress as to the root cause of the problem, and a consensus was reached among the majority of the parties in endless meetings, phone calls, and e-mails.

**Bill Squires, Blackfoot Telephone Cooperative**, also rose in support of HB 641, stating his company provided local telephone service to roughly 19,000 subscribers; nearly 70% of the annual revenue came from sources other than local service rates. One part of the revenue comes from the fees and charges Blackfoot Telephone Cooperative assesses other telecommunications companies for using their network to terminate calls, i.e., they would charge a long-distance carrier on a call from Helena to Seeley Lake for using their network in Seeley Lake to terminate the call; the same would apply to calls made from cell phones where they would charge the wireless carrier. Even though the bill was written in "telephonese" for ease of understanding by the industry, it addressed the need for being able to identify the originating carrier to ensure proper compensation. This can be done electronically within the call stream; absent this notification, the terminating carrier had to approach the transit carrier in order to obtain the records. He lamented the fact this was not happening to the detriment of his subscribers; in fact, it had led to a bitter fight between rural exchange carriers and Qwest. HB 641 was a huge step forward towards

correcting this problem; in the past two years alone, his company had lost more than \$2 million because there had not been any interconnection agreement, and this amount had to be made up by their customers to keep the company in operation. The unidentifiable calls can neither be stopped nor billed; HB 641 corrected the problem and stopped the "free ride" some originating carriers had heretofore gotten away with and gave the PSC authority to deal with this issue.

**Phil Maxwell, 3 Rivers Communications**, provided written testimony, **EXHIBIT(ens59a04)**.

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**Mike Strand, MT Independent Telecommunications Systems (MITS)**, agreed with previous testimony and stated this important bill addressed a serious problem.

**Tom Schneider, PSC**, submitted written testimony, **EXHIBIT(ens59a05)** which included the three amendments **Mr. Feiss** had alluded to. He added this legislation was long overdue because the current situation was unacceptable and inequitable, and it was not defensible.

**CHAIRMAN ROYAL JOHNSON, SD 5, BILLINGS**, asked each of the proponents whether they had testified on the bill as written or whether they had taken part in developing the amendments and had testified in favor of the grey bill; each one stated they were proponents for the grey bill.

**Opponents' Testimony:**

**Ron Williams, Western Wireless**, provided written testimony, **EXHIBIT(ens59a06)**. With regard to the negotiation process, he stated his company had not gotten involved until the late stages and then only relating to part of the language in the bill; many other agreements had since been negotiated between Qwest and MTA and between Western Wireless and MTA, and as of Monday, these negotiations had been terminated by MTA. While he understood the plight of the proponents, he stressed this issue impacted wireless carriers as well since they, too, terminated traffic which sometimes originated from other wireless carriers, and sometimes from wire line carriers. Lastly, he clarified even though a lot of money was involved, it did not affect the consumer but the interconnecting carriers.

**Amy Grmoljez, Verizon Wireless**, agreed with previous testimony and added in her opinion, HB 641 attempted to regulate three different groups, namely the originating, the transiting, and the terminating carriers. Verizon Wireless often had the role of

being both the originating and the terminating carrier, and she stressed they were not asking for "a free ride". She repeated the problems arose when no interconnection agreements were established. She stated Verizon Wireless had not been a key player in the negotiations but wanted to point out language in Section 2, subsection (6) where it stated "a carrier can unilaterally block traffic"; she contended it would create some real consumer problems if someone used their Verizon Wireless phone to make a call to a Blackfoot Telephone subscriber in Seeley Lake, and the terminating carrier, Blackfoot, was granted unilateral authority to terminate this call through this provision. She added they had repeatedly offered to come to the negotiating table during the interim to work on interconnection agreements and to work within existing law and in closing, maintained this legislation was not necessary.

**Chuck Evilsizer, Ronan Telephone Company and Hot Springs**

**Telephone Company**, stated historically, the transit carrier Qwest had always paid 100% of the tariff access charges to the independent telephone companies no matter where they originated but with the onset of cell phone traffic which used these connections but did not originate with Qwest, they no longer felt they should pay the charges; this refusal led to the litigation. In closing, he submitted **EXHIBIT (ens59a07)**, testimony from **Jay Preston, President of Ronan Telephone Company** and a proposed version of HB 641.

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**Margaret Morgan, Western Wireless**, provided written testimony, **EXHIBIT (ens59a08)**.

**Questions from Committee Members and Responses:**

**SEN. EMILY STONINGTON, SD 15, BOZEMAN**, asked which of the amendments had been requested by Qwest. **Mr. Hays** replied he lost track because numerous requests had been added and then dismissed again. **SEN. STONINGTON** referred to page 5, Subsection (6) of the grey bill which **Ms. Grmoljez** was also concerned about and asked **Mr. Feiss** for his comments. **Mr. Feiss** stated this provision was a last resort for a company but should be available to them; he recognized the effect it would have on their customers and therefore, considered this provision as a last resort. If someone had a business and was not paid for his services, they should have the right to terminate the services. If his company was the originating carrier or the terminating carrier, or both, they would fully expect to pay for or be paid for the services which were rendered; one option was to stop providing the service which were rendered and not paid for. **SEN. STONINGTON** disagreed with his analogy and wondered why this was before the Legislature

since federal and state law was already addressing these interconnection issues, and there were only 9 carriers involved.

**Mr. Feiss** stated while he appreciated opponents' testimony, the fact remained that 80% of the terminating traffic is not compensated. He did not argue with the definition of an interconnection agreement which dictated the terms of exchange of traffic between originating and terminating carriers, or with federal law as a detailed description of how an interconnection agreement is entered into, negotiated, or arbitrated; he maintained this was the crux of HB 641.

**SEN. KEN TOOLE, SD 27, HELENA,** asked how an originating carrier was identified. **Mr. Feiss** explained there was a data channel made up of the number, duration, location, and origination which should accompany an originating call but sometimes did not or it was stripped off along the way; this bill would ensure all calls were accompanied by this information, and if they were not, the transiting carrier would bill the originating carrier because they had the billing record, and then the terminating carrier would get those records from the transit carrier. **SEN. TOOLE** inquired whether the transiting carrier would always be able to identify the originating carrier by the coding. **Mr. Feiss** confirmed this should be the rule but sometimes the transiting carrier did not have the proper information with regard to the originating carrier; this was part of the negotiations and was the reason for establishing a billing record "fall back". **SEN. TOOLE** inquired whether he envisioned this bill to take care of the problems, and **Mr. Feiss** replied the bill required the originating carrier to send this code along, and it required the transiting carrier to transit this code as well. He stressed he did not care what happened with each call; all he cared about was that 80% of the traffic his members terminated was "invisible" and thus presented lost revenue. He thought it only fair for the terminating carrier to be have the same opportunity to charge for traffic it terminated on its network. **SEN. TOOLE** wondered how they would handle blocking calls; what would the consumer hear as a reason for the blockage. **Mr. Feiss** explained this was a last resort; what the caller would hear might resemble pre-recorded messages that all circuits are busy, or that the call cannot go through.

**SEN. GARY PERRY, SD 16, MANHATTAN,** asked if his member companies had contacted Qwest about this problem. **Mr. Feiss** replied they had and moreover, were involved in heated litigation with Qwest which had led to this legislation. Referring to **Mr. William's** testimony, he repeated Qwest had the responsibility for the billing records and to transmit the calling information, and this was captured in this bill.

**SEN. DON RYAN, SD 22, GREAT FALLS**, wondered how Qwest was paid for those calls which crossed over their network. **Mr. Hays** explained they pulled this information and put it through their billing system; this enabled them to generate the fees for providing the transit role. **SEN. RYAN** surmised from testimony the terminating carrier did not always get the information enabling him to bill for the calls, and asked how he would solve this problem. **Mr. Hays** replied sometimes the necessary information was not encoded on calls they sent to the terminating carrier; he added for their own billing records, they were able to pull this information off and put it through a special system but they could not put it back on and send it on its way. Terminating carriers did have the option to purchase the billing records from Qwest at a price set by the PSC. He advised whatever information came on the call from the originating carrier was the same information they sent on to the terminating carrier. **SEN. RYAN** determined from his testimony that Qwest did not always send this information on because they stripped it off to obtain information for their own billing record. **Mr. Hays** disagreed, saying they were able to obtain this information because they put it through their billing system; this information was not in the data channel but was based on a number of network factors. **SEN. RYAN** inquired how many interconnection agreements were in place between Qwest and other systems using their network. **Mr. Hays** advised there were more than 75 such agreements. **SEN. RYAN** wondered if they were public record which **Mr. Hays** affirmed, adding they were filed with and approved by the PSC. **SEN. RYAN** asked how the company reconciled the number of calls coming in and going out in case they were challenged as to the correct number of calls by the terminating carrier. **Mr. Hays** replied it depended on the interconnection agreement; typically, identified traffic was sent to the terminating carrier. **SEN. RYAN** asked what percentage of companies operating in Montana they had such agreements with. **Mr. Hays** stated they had interconnection agreements with everybody who did business with Qwest.

**SEN. COREY STAPLETON, SD 10, BILLINGS**, wondered if Qwest knew 100% of the time, in either role, who the originating carrier was. **Mr. Hays** replied they could identify the calling company by their billing records 100% of the time. **SEN. STAPLETON** referred to the billings records and asked if the purchasing rates were the same for all companies looking to buy them which **Mr. Hays** confirmed. **SEN. STAPLETON** surmised **3 Rivers Communications** must not purchase these records as they testified they only were paid for 20% of the calls they terminated and asked if they did purchase them, would they recover 100% of the monies due them. When **Mr. Hays** agreed, **SEN. STAPLETON** assumed **3 Rivers**

**Communications** chose not to purchase the identification service from Qwest. **Mr. Maxwell** replied they did not because they were not able to tell if the records were accurate, i.e., if they corresponded to the total number of calls terminated on his network. **SEN. STAPLETON** asked if they had ever purchased them, and **Mr. Maxwell** replied not to his knowledge. **SEN. STAPLETON** wondered how they could make the determination of inaccuracy, and **Mr. Maxwell** advised it was made pursuant to discussions with companies who had purchased them. **SEN. STAPLETON** wondered how he could be a proponent of HB 641 when he relied on hearsay regarding a key issue. **Mr. Maxwell** explained he was a proponent because through this bill, they could receive the information they needed to bill the originating carrier.

**SEN. BOB STORY, SD 12, PARK CITY**, recalled this bill from the last session and asked what changes had been made. **Mr. Hays** advised the technology provisions had been removed so as not to force anyone to invest in new technology; the attempt was made to provide options through the interconnection agreements and the billings records without specifying brands or types of technology. **SEN. STORY** referred to previous testimony which had stated Qwest used to be the middleman with regard to the logistics by paying for everything which went on someone's system and by collecting for everything coming onto their network; this meant there were no interconnection problems, and he wondered why this practice had ended. **Mr. Hays** explained it ended with passage of the 1996 Telecommunications Act and the advent of hundreds of new competitors. All of these companies had their own services and trunk connections which made it difficult for Qwest to identify and pass through the information; they established their own billing system at that time. Before the Act, it was either Mountain Bell and US West traffic or someone else in the Bell system. **SEN. STORY** wondered how Qwest was paid for transiting calls if they could not identify them, and **Mr. Hays** replied they could identify them but only by going through their billing process; identification was not apparent by the calling stream. **SEN. STORY** suspected the only way a company would come out ahead was by terminating more calls than it originated, and he asked how many of his member companies did just that and if he really wanted to have all this information. **Mr. Feiss** was not sure of the exact balance but assured him he did want the information, saying the interconnection agreement encompassed both the origination and termination exchange traffic. **SEN. STORY** surmised the company losing \$2 million with regard to termination probably did not pay for every origination either. **Mr. Feiss** disagreed and explained far more traffic terminated from a wireless carrier than originated to a wireless carrier; he was certain the net effect would still benefit the terminating carrier even if the missing terminating revenues were



compared to the originating revenues between his companies and the ones with whom they had interconnection agreements. **SEN. STORY** wondered if this applied to both interstate and intra-state calls. **Mr. Feiss** advised interstate issues were addressed in the House but led to problems because under federal law, inter-exchange service for wire line carrier was different from the inter-exchange service for wireless carriers; thus, they went from the inter-exchange concept to "local" and "non-local". With a wireless carrier, "local" could encompass a call from Spokane to Missoula whereas with a wire line call, it would be an inter-exchange call. He explained wireless carriers used MTA's (Major Trading Areas) whereas wire line carriers used exchanges. **SEN. STORY** referred back to **SEN. STONINGTON's** concern with regard to blocking calls; if the call could not be identified, how could it be blocked. **Mr. Feiss** replied they could not pick and choose whom to terminate; if they sought an interconnection agreement with a carrier who refused to enter into an agreement or otherwise failed to comply with the provisions of this bill, then they could target that carrier. He was quick to add this provision would not make or break this legislation. **SEN. STORY** ascertained Qwest was a transiting carrier as defined in this bill and wondered what AT&T's role was. **Mr. Feiss** stated this was one of the problems which had come up in the House and the reason for some new language in the bill.

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AT&T terminated most of his members' traffic as well as that of a number of other long-distance providers over a circuit on his members' network; he added they were able to identify each one and either AT&T paid access revenue for all the carriers it was carrying on an inter-exchange or they paid for all of the traffic they deliver and then charged the individual carriers on their inter-exchange network. **SEN. STORY** wondered why they were opposing this bill, and **Mr. Feiss** surmised it was because of AT&T's wireless division and admitted he was distraught over this because of all they had done to get them to participate, adding they were the ones who were not paying their share.

**SEN. PERRY** wondered if he had approached Western Wireless to let them know there was a problem, and **Mr. Feiss** replied he had not done so personally but recalled **Mr. Williams** stating they had interconnection agreements with nine of the seventeen carriers in Montana; he added they had not been able to identify traffic based on which they could have contacted Western Wireless. **SEN. PERRY** asked if it would be a prudent measure to go to **Mr. Williams** and talk about this problem. **Mr. Feiss** stated he would if he could identify their traffic; without knowing what to interconnect, there could be no interconnection agreement.

**SEN. RYAN** asked if any of MTA's members had contacted the PSC with complaints about the lack of payments in order to get this resolved. **Mr. Feiss** stated they had but were told the commission did not have any authority to intervene; thus the litigation which was mentioned earlier. **SEN. RYAN** addressed **Mr. Schneider, PSC**, and asked if they, in fact, had no authority to settle this issue between companies they regulated. **Mr. Schneider** advised this determination was made right after the Federal Act became law; the commission did not have the authority to require interconnection agreements. The PSC felt this bill was the vehicle to close the loophole and give clear authority to the commission resolve these issues. **SEN. RYAN** wondered if passage of HB 641 would take care of the problem so the parties involved would not come back to the Legislature looking for help. **Mr. Schneider** replied he hoped this would resolve and settle the issue to everyone's satisfaction, and they would not have to come back before the Legislature.

**SEN. STAPLETON** surmised all of the needed information existed, with Qwest being able to identify 100% of the traffic, and he wondered why anyone would try all these different ways to get their money instead of just purchasing the data from Qwest. **Mr. Schneider** replied he did not have a good answer; he opined Qwest was creating a barrier by stripping off information for their own billing use, and other companies had to purchase this information for their billing purposes. He repeated HB 641 was the vehicle to get this resolved. **SEN. STAPLETON** took exception to this, maintaining all the tools to solve this were available; he did not understand why the parties involved appeared as proponents but yet made no attempt to obtain the information they needed from Qwest even though they only collected 20% of the revenue due them. **Mr. Schneider** replied he had no better answer other than to say this had been in litigation for seven years, and the majority of those present, including his staff, were certain each of the elements in the bill would close the loop.

**SEN. STONINGTON** agreed with **SEN. STAPLETON's** assessment and asked how he could say who was not paying their share while accusing Verizon Wireless and Western Wireless of not paying; she also wondered if they had approached these two companies with regard to establishing an interconnection agreement. **Mr. Feiss** stated in the cases where they could identify the carrier whose traffic is terminating on their network, they did negotiate contracts for the exchange of traffic; however, there was another facet which he explained as follows: in some cases where the traffic was identifiable and interconnection agreements were in place, the wireless carrier filled the circuit with traffic and the circuit went dead but the terminating carrier was still getting more minutes in on their switch, and they were not identifiable. He

agreed all the pieces of the equation existed but none of the players came to the negotiating table until forced by this legislation. He reiterated it was the large companies who were not paying for the services, and it was small companies who were being cheated.

**CHAIRMAN JOHNSON** asked him who he invited to take part in the negotiations resulting in this amended bill. **Mr. Feiss** replied they had invited Verizon and Western Wireless, and they had taken part in making up the bill. **CHAIRMAN JOHNSON** wondered if he had asked Ronan Telephone, and **Mr. Feiss** stated the did not see any constructive value in asking them because they had opposed the bill on third reading in the House and continued to oppose it through the amendment process. **CHAIRMAN JOHNSON** surmised everyone who testified at this hearing had been invited to participate, which **Mr. Feiss** confirmed, saying they had talked with everyone either through conference calls or directly. **CHAIRMAN JOHNSON** grew impatient, stating the committee could spend all night talking about this and stated it was the responsibility of the parties involved to get together and settle this, and if anyone had any objections, to voice them right then; he ordered everyone to put their thoughts and suggestions in writing and to turn the papers into the committee by Wednesday of the following week.

**Closing by Sponsor:**

**REP. HAINES** closed on HB 641, thanking the chairman for his fortitude in dealing with this issue; he agreed the parties involved should get together and come to an agreement because the needed data and details were only available through interconnection agreements. **CHAIRMAN JOHNSON** asked him to be part of the round table discussions as well.

**HEARING ON HB 710**

**Sponsor:**           **REP. HOLLY RASER, HD 70, MISSOULA**

**Proponents:**       **Cort Jensen, Department of Administration,**  
                              **Consumer Protection Office**  
                              **Rick Hays, Qwest**  
                              **Jim Kembel, self**  
                              **Cory Swanson, Bresnan Communications**  
                              **Forrest Christian, MT Internet**

**Opponents:**       **Chuck Evilsizer, MontanaSky.Net/Mooseweb Corp.**

**Opening Statement by Sponsor:**

**REP. HOLLY RASER, HD 70, MISSOULA**, presented HB 710 which made certain commercial electronic mail messages a violation of the Consumer Protection Act, required appropriate labeling of said messages, and allowed computer services to block transmission of prohibited electronic messages. The reason for HB 710 was the deluge of unwanted e-mails, and the focus of the bill was intra-state communications which paralleled a similar bill sponsored by U.S. Senator Burns. She provided **EXHIBIT(ens59a09)**, an amendment requested by Qwest and **EXHIBIT(ens59a10)**, an amendment by the sponsor which both addressed concerns voiced during the hearing in the House. Qwest was specifically interested in clarifying it was not the intent of the bill to hold the carrier or the person passing on the electronic mail responsible for the content of the e-mail and therefore, the carrier would not be in violation of the Consumer Protection Act. As to item (2) of Qwest's amendment, the intent of HB 710 was to address unsolicited and deceptive e-mail, and not e-mail coming from any prior business relationships or from a non-profit organization or college/university. She briefly went over various provisions of the bill and deferred to **Cort Jensen**.

**Proponents' Testimony:**

**Cort Jensen, Department of Administration, Consumer Protection Office**, stated the question arose in the House hearing why these electronic messages could not be treated like telemarketing calls and be banned altogether rather than labeled. He explained case law for e-mail messages had made it clear labeling was permissible as were requirements pertaining to misleading conduct but the state had no compelling interest to block SPAM. "ADV" and "ADV-Adult" labeling in the subject line allowed a service provider or an individual to set their computer e-mail so messages labeled in this way would be deleted automatically. These particular labels are part of HB 710 because they corresponded to the above mentioned legislation before Congress as well as being part of similar legislation in other states. Clear and consistent labeling allowed Internet Service Providers (ISP's) to monitor and correct violations more easily. He felt the amendments brought forth by business entities served to clarify the bill and were very helpful.

**Rick Hays, Qwest**, rose in support of HB 710.

**Jim Kembel, self**, stated as a private consultant, each time he downloaded his e-mail, he would find 20 to 30 unsolicited items which appeared to have embedded themselves in his provider's network, and who was unable to block them.

**Cory Swanson, Bresnan Communications**, also stood in support of HB 710, stating they had been concerned in beginning because they were in the process of acquiring ComCast's cable system and wanted to be able to e-mail their new customers what kind of services they could offer. The sponsor had worked with them, and they were able to come up with an amendment which addressed and solved their initial concern.

**Forrest Christian, MT Internet**, rose in support of HB 710 and stated the amendments offered here did address some of his concerns. To make the committee aware of the scope of this problem, he added on their mail server, they have 3,847 mailboxes for customers in Helena, Great Falls, Lewistown, and Missoula; every day, the server processed 81,000 messages which are determined to be SPAM by the SPAM filter. Some of these messages were forged, or they use misleading and disguised subject lines so people will open them; a problem arose when a recipient was no longer a subscriber, and they had to return the e-mails to the sender. Some of these have forged addresses so the mail cannot be returned, and then it stayed on mail server; he estimated there were more than 100,000 such messages in their outbound mailbox. He contended 80% of their e-mail volume was SPAM which translated into 21 SPAM messages per user per day. He was satisfied that HB 710 as amended would solve a large part of this issue. One problem remained, though, and that was the cost of dealing with these unsolicited messages; he stated he would like to work out an amendment which would give them the legal means to pursue some of the companies dumping SPAM into the system to help recover some of their cost of transmitting the unwanted mail.

**Note:** **EXHIBIT(ens59a11)**, written testimony by representatives of **Montana Internet Connect**, was left with the secretary when they had to leave prior to being heard.

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**Opponents' Testimony:**

**Chuck Evilsizer, MontanaSky.Net/Mooseweb Corp.**, submitted written testimony, **EXHIBIT(ens59a12)**.

**Informational Testimony:**

**Cathy Conover, Montana State University**, stated the University had worked with the sponsor for consideration of an amendment which would enable their admissions operations to recruit students by contacting them via e-mail; she explained the admissions office worked with a consultant who provided them with prospective students' e-mail addresses. She contended without

the amendment as per EXHIBIT (10), the interpretation with regard to a prior business relationship might have been problematic for them and lauded the sponsor for amending the bill.

**Questions from Committee Members and Responses:**

**SEN. PERRY** asked the sponsor if the amendments addressed all of the objections the committee had heard. **REP. RASER** replied the only one which was not addressed was the cost issue regarding the volume of traffic.

**CHAIRMAN JOHNSON** inquired if someone had requested this bill, or if she had brought it forth on her own. **REP. RASER** advised it had been her idea. **CHAIRMAN JOHNSON** asked if she was willing to work with the parties who still had concerns, and whether she would get the amendments drafted, and the sponsor said she would.

**SEN. STORY**, referring to the lone opponent's testimony with regard to not being able to recover the cost of transmitting SPAM and his assertion this bill would make "spamming" legal, invited **Mr. Christian** to comment. **Mr. Christian** stated he had heard this argument before and stated this bill created a standard for these e-mails to be honest and truthful, meaning their source would be identifiable, and the subject line correct so it could be tagged as an advertisement. He contended 90% of his problem as an ISP was that these things were not done; he added most of the SPAM mail was not even legal under current law. As to the question whether this bill would create a "spammer's haven" by requiring the labeling of e-mail, he claimed it would be easier for people to clean out their inbox and delete everything labeled "advertising" (ADV). He agreed there was cost involved but e-mails were a small portion of his overall data traffic; percentage-wise, bandwidth was not the problem as had been asserted earlier, the problem was dealing with the volume in the servers. **SEN. STORY** felt the amendments might protect the ISPs but if an individual received SPAM and passed it on, would he assist in the deception and run afoul of the law. **Mr. Christian** surmised he was looking for a loophole and deferred to **Mr. Jensen** who advised if he forwarded a commercial message to a friend because he thought it was humorous, it would lose its commercial element.

**Closing by Sponsor:**

**REP. RASER** addressed **SEN. STORY's** concern by stressing someone would have to complain about an e-mail to set the wheels in motion. With regard to the labeling requirement making Montana a "spammer's haven", she maintained these advertisements were already being sent; the labeling served as identification. As

for the cost issue, she stated if this bill passed, it would establish a mechanism where complaints could be filed with either the Consumer Protection Office or the Attorney General's Office. She added she would be happy to continue to work with the parties involved. In closing, she stated this bill was limited as someone had pointed out because the Legislature could not go beyond the state's borders but it was an important step towards limiting SPAM.

#### HEARING ON HB 637

**Sponsor:** REP. HOLLY RASER, HD 70, MISSOULA

**Proponents:** Cort Jensen, Department of Administration,  
Consumer Protection Office  
Jim Kembel, MT Assn. of Chiefs of Police

**Opponents:** None

#### Opening Statement by Sponsor:

REP. HOLLY RASER, HD 70, MISSOULA, presented HB 637, stating this bill prohibited unsolicited advertising through facsimile transmission, or faxes, and made it a violation of Montana's Unfair Trade Practices and Consumer Protection Act. She brought this bill forth because unsolicited faxes were as much a problem as e-mail SPAM; they also took a person's resources, namely paper and toner.

#### Proponents' Testimony:

Cort Jensen, Department of Administration, Consumer Protection Office, stated this bill mimicked, word for word, current federal law; enforcement on the federal level left much to be desired with only two agents investigating these cases in Federal Court. This legislation would allow his office to investigate violations, it allowed people to bring private action in State Court, and it afforded the people of Montana some measure of protection. There were devices enabling the sender to inundate any given business with "blast faxes" to the extent they have to change their fax number which is detrimental to their business.

Jim Kembel, MT Assn. of Police Chiefs, thanked the sponsor for including the public safety factor on line 23; police departments often resorted to faxing important public safety notices.

#### Questions from Committee Members and Responses:

**SEN. STORY** asked why the sponsor did not include an exemption for previous business relationships. **REP. RASER** answered nobody had objected to the bill as written.

**CHAIRMAN JOHNSON** wondered if this could be stopped with a do-not-call list. **Cort Jensen** advised this needed to go further because it wasted the recipient's printer paper and toner. **CHAIRMAN JOHNSON** repeated his question of how to stop the faxes; since a fax number was a phone number, could this not be included in a telephone do-not-call list. **Mr. Jensen** replied it would not be possible because of the difference in technology; this dealt with software for "fax-blasting". He did say, however, his office would subpoena the phone company's records to find out who was sent the faxes. **CHAIRMAN JOHNSON** ascertained this was complaint-oriented as well; the Consumer Protection Office would not find out about a violation unless a complaint was filed which **Mr. Jensen** confirmed, adding they had received many such complaints within the last six months. **CHAIRMAN JOHNSON** asked how they got the companies to stop this practice. **Mr. Jensen** replied this was problematic because he had to contact the federal investigators since he had no jurisdiction at the state level, absent this law. The FCC's recommendation was for the recipients to change their fax number.

**SEN. STORY** asked whether this legislation applied to interstate or intra-state faxes, and **Mr. Jensen** replied it applied to both.

**Closing by Sponsor:**

**REP. RASER** closed on HB 637.

**Note:** **EXHIBIT(ens59a13)** and **EXHIBIT(ens59a14)** were submitted after the hearing.



**ADJOURNMENT**

Adjournment: 7:55 P.M.

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SEN. ROYAL JOHNSON, Chairman

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MARION MOOD, Secretary

RJ/MM

**EXHIBIT (ens59aad)**